LOW SEE FONG & ANOR.

v.

DATO' PUA YONG YONG & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[CIVIL SUIT NO. C 808 OF 1984]
17 JULY 1986

CIVIL PROCEDURE: *Application for leave of Court to proceed with committal proceedings - Interrogatories - Whether answered as required - Basis for committal proceedings - Whether application should be allowed.*

This was an application by the plaintiffs for leave of the Court to proceed with committal proceedings against both the defendants. The application was in respect of an order of the court dated 27 August 1985, which order, *inter alia*, gave leave to the plaintiffs to serve on the defendants the interrogatories shown in the document served, and that the defendants answer the interrogatories on an affidavit within 30 days.

The only reason given by the plaintiffs why they wanted to proceed with the committal proceedings was that the defendants had failed and/or refused to file their answer to the 3rd, 4th and 5th interrogatories. Pursuant to the order of the court, the plaintiffs served interrogatories, which consisted of five questions. The interrogatories stated that "The **defendants Dato Pua Yong Yong and Lee Ooi Yoke are required to answer interrogatories numbered 1 and 2.** Mr. Tan Boo Kian ... is required to answer Interrogatories numbered 3, 4 and 5."

The defendants answered the 1st and 2nd interrogatories by an affidavit affirmed on 22 December 1985. They did not answer the 3rd, 4th and 5th interrogatories.

Held:

[1] Both the defendants had answered the 1st and 2nd interrogatories, which they were required to answer. So there was no basis for committal proceedings against the defendants.

[2] The application was frivolous and vexatious and the plaintiffs were clearly ill advised by their solicitors.

[Application dismissed with costs.]

For the plaintiffs - Nik Mohamed; M/s. Dason & Co.
For the defendants - Achan; M/s. Tengku Mohamed Achan & Lim

JUDGMENT

Zakaria Yatim J:

This was an application by the plaintiffs for leave of the Court to proceed with committal proceedings against both the defendants.

The application was supported by an affidavit affirmed by Mr. A.J. Dason, the plaintiff's solicitor. The deponent referred to an order of the Court dated 27 August 1985. The order *inter alia* stated:

> (d) The plaintiffs have leave to serve on the defendants the interrogatories shown in the document served herewith, and the defendants answers the interrogatories on an affidavit within thirty (30) days.

In his affidavit, Mr. Dason complained that "The defendants have failed and/or refused to file their answer to the third, fourth and fifth interrogatories and to serve a copy of the same on plaintiff's solicitors." This was the only reason given by the plaintiffs why they wanted to proceed with committal proceedings against the defendants.

Pursuant to the order of the court, the plaintiffs served on the defendants interrogatories, which consisted of the five questions. The interrogatories clearly stated that "The **defendants Dato Pua Yong Yong and Lee Ooi Yoke are required to answer interrogatories numbered 1 and 2.** Mr.Tan Boo Kian ... is required to answer Interrogatories numbered 3, 4 and 5" (Emphasis added). The first and second interrogatories stated:

1. Look at the agreement referred to in para. 2 of the Statement of Claim. Was the same written and signed by you?
2. Was the deposit of RM52,000 referred to in Clause 1 of the aforesaid agreement paid by you to plaintiffs? or to the Solicitors of the Parties - M/s. Sothi and Ang?

By an affidavit affirmed on 22 December 1985 both the defendants answered the first and second interrogatories. The answers were as follows:

> In answer to the said interrogatories, we the abovenamed defendants, do affirm and say as follows:
>
> (1) To the first interrogatory, namely, look at the agreement referred to in para. 2 of the statement of claim. Was the same written and signed by you?
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> that save and except that the purported agreement referred to in para. 2 of the statement of claim was signed by the defendants, the defendants aver and contend that the first plaintiff's refusal to execute the agreement showed a lack of consensus of the terms and/or alternatively it amounted to a repudiation of the said Agreement.
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> (2) To the second interrogatory, namely, was the deposit of RM52,000 referred to in Clause 1 of the aforesaid agreement paid by you or to the solicitors of the parties - Ms. Sothi & Ang?
>
> that a UMBC cheque No. 901198 made in favour of the plaintiffs for the sum of RM52,000 was sent to Mr. Tan Bu Kian, Advocate & Solicitor of Messrs. Sothi & Ang together with a letter dated 28 November 1983. On the date of execution, i.e. 28 November 1983, the 1st defendant, Dato Pua Yong Yong instructed Mr. Tan Bu Kian of Messrs. Sothi & Ang not to release the sum of RM52,000 to the plaintiffs in view of the 1st plaintiff namely Low See Fong refusal to execute included *inter alia*, his disagreement that the following terms were included and formed part of the subject matter of the same.

It is clear that both the defendants had answered the first and second interrogatories, which they were required to answer. I found no basis for committal proceedings against the defendants. The application was frivolous and vexatious and the plaintiffs were clearly ill advised by their solicitors.

For the reasons stated above, I dismissed the application with costs.

Also found at [1986] 2 CLJ 310